JAIL REFORM AS A TOOL TO ROBUST CRIMINAL JUSTICE SYSTEM IN INDIA

A

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APPENDIX-IV-A

Format for Outline (Synopsis) of Proposed Research work

(To be supplied in four copies)

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1. Name of Scholar (In English) – Naresh Kumar Meena

   (In Hindi) – नरेश कुमार मीना

2. Title of the Research Work :

   (In English) – "JAIL REFORM AS A TOOL TO ROBUST CRIMINAL JUSTICE SYSTEM IN INDIA

   (In Hindi) – भारत में आपराधिक न्याय व्यवस्था के सशक्तिकरण में जेल सुधार एक साधन के रूप में

3. Location – Government Law College
   a. Institution/Department where the work is to done.
   b. Geographical area of Investigation, if any.
4. Introduction Importance of Propossed Investigation, Objective.
5. Review (Work already done on the subject of Proposed Research Study.)
6. Research (Gaps identified in the proposed field of investigation. (Based on the review)
7. Major Hypothesis, if any
8. Research methodology.
9. List of reference cited.

Signature of the Candidate with date

Outline Approved

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INTRODUCTION

PROBLEM, NEED AND IMPORTANCE

"Overall, we need bold change In our criminal justice system. A good first step forward is to start treating prisoners as Human beings, not profiting from their incarceration. Our emphasis must be on Rehabilitation not incarceration and longer prison sentences"

SEN. BERNIE SANDERS (I-VT.)

The need of reformation in the prison systems throughout the world can be symbolised in quotation above, although prison systems everywhere are marked by inertia, few can match India's in immutability of practice. A country which over 40 years ago cast off British rule still administers its system under the colonial Prisons Act of 1894. Perhaps because the act is such a relic of the past, or perhaps because prison officials prefer the route of least accountability, the various state prison manuals that embody the 1894 provisions are collectors' items, not only in short supply but expensive. A number of prison commissions have attempted to update and revise the code, but aside from a few states, these efforts have not received legislative approval. It is not only the rules and regulations but the day to day reality of Indian prisons which is so archaic.

As we know the prison is defined as such a place in which persons are kept in custody pending trial or in which they are confined as punishment after conviction. The word prison means different things for the different people. To the law be stable it is considered as a place where the criminals end up. To the criminal it could be an obscure hazard or an unavoidable indignity. For the social inadequate it is a shelter. To some isolated individuals it may be the only place where they can find some semblance of championship. It is the place of work for Prison officers. For the psychologist, it is a place of career in studying behavior of the prisoners. But for thousands of the people, an experience which slows up time, which crows them together, sets them apart and changes the conditions of their lives.

The original term of prison is 'Jail' or 'gaol' or 'penitentiary.' Prison has been defined as "a place properly arranged and equipped for reception of persons who by legal processes are committed to it for safe custody while awaiting trial or for punishment".5 A "Prison"6 or "Jail"7 is a facility in which individuals are forcibly confined and denied a variety of free doms under the authority of the State as a form of punishment. The most common use of prisons as part of the criminal justice system, is in which individuals are officially charged with or convicted of crimes are confined to a Jail or Prison until they are either brought to trial to determine their guilt or complete the period of incarceration they were sentenced to, after being found guilty at their trial. Hence, in its origin the Prison was considered as a place of detention of offenders until trial and Judgment and the execution of the latter.

Prison system in India, is just one of a number of sanctions available to the courts to deal with those who commit criminal offences. Imprisonment today has become the harshest sanction available but this has not always been the case.

During early days punishment for criminal behavior tended to be public events which were designed to shame the person and deter others; these included the ducking stools, the pillories, whipping, branding and the stocks. At that time, the sentences for many other offences was death. Prison in India has tended to be a place where people were held before their trial or while awaiting punishments. It was very rarely being used as a punishment in its own right. In history of Indian prison, then Men and women, boys and girls, debtors and murderers were all held together in local prisons. This Evidence suggests that "prisons in India, at ancient period were badly maintained and often controlled by negligent prison warders". Many people had died of diseases like gaol fever, which was a form of typhus1. The most important innovation of this period was: to build the prototype house of correction, the London Bridewell2. Houses of correction were originally the part of the machinery of the Poor Law, was intended to instill habits of industry through prison labour. From the prisoners mostly held in them, were petty offenders, vagrants and the disorderly local poor. In India, by the end of the 17th century they were absorbed into the prison system under the control of the local Justices of the Peace.

The evolution of prison system in India is very dramatic. One may say that Indian prison system is one of the very complex systems of the world to understand. In general three phases may be distinguished in the history of prisons. During the first, which lasted until the middle of the 16th century, penal institutions were chiefly dungeons of detention rooms in secure parts of castles or city, in which prisoners awaiting trial or execution of sentences were kept. The second phase was one of experimentation with imprisonment a form of punishment for certain types of offenders, mostly, Juveniles. The third phase was the universal adaptation of imprisonment as a substitute for all of the capital punishments.

Prisons in the shape of dungeons, was existed from the time of immemorial in all the countries of the world. In his book, "The Future of imprisonment' NORVAL MORRIS.6 Refers to punitive imprisonment used extensively in Rome, Egypt, China, India, Assyria and Babylon and firmly established in Renaissance Europe. But prison sentence, as a specific punishment, is relatively recent origin. The prison as we know, it came into the existence largely as an interim house of detention of an offender pending trial and punishment.

In India, the early prisons were only places of detention where an offender was detained until trial and judgment and the execution of the latter. The first phase of ancient civilization in India when Dharma was Supreme, the offender was shown maximum tolerance, but that was gradually ousted by political party of the King in the middle ages (Chowdhary, 2002:13). The ancient period speaks of four methods of punishment (Danda) namely, by gentle admonition, by severe reproof, by fine, and by corporal punishments and declared that these punishments may be inflicted separately or together according to the nature of the offence. The structure of the society in ancient India was founded on the

principles enunciated by Manu and explained by Yagnavalkya, Kautilya and others. Among various types of corporal punishments – branding, hanging, mutilation and death, the imprisonment was the most mild kind of penalty known prominently in ancient Indian penology. The main aim of imprisonment was to keep away the wrong doers, so that they might not defile the members of social order. These prisons' conditions were totally dark dens, cool and damp, unlighted. There was not proper arrangement for the sanitation and no means of facility for human dwelling. Fine, imprisonment, banishment, mutilation and death sentence were the punishments in vogue. In prison, fine was the most common and condemned person who could not pay his bill to bondage until it was paid by his labour in the prison.

The legal system in the Mediaeval India resembled that of Ancient India and the contemporary Muslim rulers seldom, if at all, attempted to tamper with the day to day administration of Justice. During the Mughal age sources of law and its character was essentially Quranic and remained same. Crimes were divided into three groups, namely,
a) Offences against God, b) Offences against State, c) Offences against private persons.

The British colonial rule in India marked the beginning of penal reforms in this country. The Prison First Enquiry Committee appointed by the govt of india in 1836 recommended the abolition of the practice of Prisoners working on roads.

The Second jail enquiry Committee in 1862 expressed concern for the insanitary conditions of Indian prisons which resulted into death of several prisoners due to illness and disease.

The third jail enquiry committee in 1877 followed by further suggestions in 1889 and 1892 respectively.

As a result of these recommendations, the Prision Act, 1894 was enacted to bring about uniformity in the working of prisons in India.

The Repatriation of Prisoners Act 2003

Punishment for these offences were put in four classes, they were,
1) Hadd 2) tazir 3) Quisas 4) Tasir.

The prison system as it operates these days in our country is a legacy of the British rule. It was an ingenious creation of the colonial rulers over our home-grown penal system with the prime motive of making imprisonment "a terror to wrong doers". Nevertheless it was a great leap in the history of our penal reforms as it facilitated the abolition of our old fashioned prison system of barbarous punishments and substitution of imprisonments as the chief form of punishment for crimes in our country. In 1784 the British Parliament empowered the East India Company to rule India and since then some effective attempts were made for introducing the reforms in the administration of Law and Justice. At that time there were only 143 civil jails, 75 criminal jails and 68 mixed jails in our country. In fact these jails

were an extension Mughal rule which were managed by the personnel of the East India Company in their efforts to maintain peace andestablish their trade.

The Constitution of India enlisted 'Prisons, reformatories, Borstal institutions and other institutions of a like nature, and persons detained therein; arrangements with other States for the use of prisons and other institutions' in the State list of the Seventh Schedule. Consequently, the Union Government ceased to have any responsibility of modernizing the prisons and their administrative structures across the States. In the year 1951, at request of the Government of India, under the Technical Assistance Programme, the United Nations sent Dr W C Reckless, a technical expert on Crime Prevention and Treatment of Offenders, for his recommendations on prison reforms ii India. Dr Reckless advocated for the development of the whole time probation and after care services, the establishment of new jails with specialized functions, legal substitutes for short term imprisonment sentences, reduction in the number of undertrial prisoners and revision of Jail Manuals.

In the year 1951, at request of the Government of India, under the Technical Assistance Programme, Following major policy guidelines regarding reformation and rehabilitation of prisoners were deliberated upon and unanimously accepted in the Government:

That the correctional services should form an integral part of the Home Department of each State and a Central Bureau of Correctional Services should he established at the Centre;

That the reformative methods of probation and parole should be used to reduce the population burden on prisons;
That the aftercare units should be set up in each State;
That solitary confinement as a mode of punishment should be abolished;
That classification of prisoners for the purposes of their treatment was necessary; and
That State Jail Manuals should be revised periodically. the Government of India appointed an All India Jail Reforms Committee chaired by the Hon'ble Mr Justice A N

Mulla (retd), Some of the 659 significant recommendations of the Mulla Committee were: Formulation of the Directive Principle of National Policy on Prisons and insertion thereof in Part IV of the Indian Constitution; Enlisting the subject of Prisons and allied services in the Concurrent List of the Seventh Schedule to the Indian Constitution; Improvement as regards arrangements for food, clothing sanitation, ventilation etc. for the prisoners: Proper training of prison staff and its organization into different cadres; Constitution of an All India Service called the Indian Prisons & Correctional Service for recruitment of prison officials; Constitution of aftercare, rehabilitation and probation as an integral pan of prison service; Development of scheme for prison visits by the media and public as a part of open rehabilitation process; Reduction in lodging of under trials in jail by speedy trials and liberalization of bail provisions; Segregation of under trials from the convicts; Adequate budgetary provisions for prison reforms.

In the month of May, 1956, a National Expert Committee on Women Prisoners, chaired by Hon'ble Mr. Justice V R Krishna Iyer was constituted, The Committee mainly recommended for:

1. Provision of national policy for women prisoners in India;
2. Enactment of new rules and regulations qua punishment and conduct of women prisoners;
3. Provision of Free Legal Aid to women prisoners;
4. Construction of separate prison for women; and
5. Provision for proper care of the child born to a woman prisoner in jail as regards medical help and diet,

Indian Jail Reform committee – 1919 – 20
Law commission in its 78th Report -1979
National Crime Record Bureau (NCRB) New Delhi as on 31st December 2007
Jail – Total Jail in India – 1276, Central jails – 113, District jail – 309, Sub-Jails – 769 , Open Jails – 28, Special Jails – 29, Women jails – 16, Other jails – 41, Ist time – after-care of released prisoner, Jail manual 1957 prison Act-1894

Pakwasa Committee - As suggested by pakwasa committee a model Jail was established at Lucknow in 1949

Mulla Committee: (All India Committee on Jail Reforms 1980-83)- The basic objective of the Committee was to review the laws, rules and regulations keeping in view the overall objective of protecting society and rehabilitating offenders. It recommended a total ban on the heinous practice of clubbing together juvenile offenders with hardened criminals in prisons.

The first women Jail was extablished in Maharashtra at Yarwada

The committee suggested setting up of a National Prison Cmmission as a continuing body to bring about modernisation of prisons in India.

To constitute an All India Service called the Indian Prisons and Correctional Service for the recruitment of Prison Officials.

After-care, rehabilitation and probation should constitute an integral part of prison service.

The conditions of prison should be improved by making adequate arrangements for food, clothing, sanitation and ventilation etc.

Lodging of under trial in jails should be reduced to bare minimum and they should be kept separate from the convicted prisoners.

The Government should make an endeavour to provide adequate resources and funds for prison reforms.

It was constituted in 1987 for women prisoners. It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders

The Indian Supreme Court has been active in responding to human right violations in Indian jails and has, in the process, recognized a number of rights of prisoners by interpreting Articles 21, 19, 22, 32, 37 and 39 A of the Constitution in a positive and humane way. The Supreme Court of India in the recent four decades has been very active against violation of the Human Rights of the prisoners. In this area an attempt is made to explain the some of the provisions of the rights of prisoners under the International and National contexts and also as interpreted by the Supreme Court of India in the light of Fundamental Rights. Through its positive approach and the Activism, the Indian judiciary has served as an institution for providing effective remedy against the violations of Human Rights. Prisoners depend on prison authorities for almost all of their day to day needs, and the state possesses control over their life and liberty, the mechanism of rights springs up to prevent the authorities from abusing their power. Prison authorities have to be, therefore, accountable for the manner in which they exercise their custody over persons in their care, especially as regards their wide discretionary powers. Disturbing conditions of the prison and violation of the basic human rights such as custodial deaths, physical violence/torture, police excess, degrading treatment, custodial rape, poor quality of food, lack of water supply, poor health system support, not producing the prisoners to the court, unjustified prolonged incarceration, forced labour ,overcrowded prisons, prolonged detention of under trial prisoners, unsatisfactory living condition and allegations of indifferent and even inhuman treatment by prison staff and other problems observed by the apex court have led to judicial activism.

The Indian Judicial system has played a significant role in the direction of protection of prisoners and also to ensure safety and security of the people in custody or inmates or detenues. Judicial setup (especially supreme courts and high courts) in India, under no circumstances, can pave way for violation of human rights of the people in custody and allow inhuman activities to go on. The jurisdiction of the judiciary system is to see to it that the accused, whom they order to be arrested by police, is duly informed of the grounds for his/her arrest. They should also ensure that the nearest relative of the accused is in touch with him and the accused is allowed to contact the legal practitioner of his own choice and appropriate arrangements are also made to regain his freedom. It is provided in the Code of Criminal Procedure **(Cr.P.C.).** The Judicial Magistrate should enquire from the accused as to whether he/she has been informed of the grounds of his/her arrest. This provision is made in Art.22 (1) of the Indian Constitution.

Open Prisons The institution of prison serves a dual purpose of eliminating criminals from society and reformation and rehabilitation the offenders under institutional treatment by blanketing out conditions which in the first place turned them into law-violaters. It has now been generally accepted that after – care service must form an integral part of penal programme. As a part of correctional service it presupposes active help and guidance to the

discharged prisoners through counseling and surveillance. The process has therefore, been called the "released person's convalescence".

"An open institution is characterized by the absence of material and physical precautions against escape such as walls, locks, bars and armed – guards etc., and by a system based on self-discipline and innate sense of responsibility towards the group in which he lives".

Origin of Open Prisons The emergence of 'Open Prisons' marks the beginning of a new phase in the history of prisons. In the closing years of nineteenth century, a semi-open prison institution called the Witzwill establishment was set up in Switzerland. Open-prisons in modern sense were, however, established, in U.K. in 1930's and in United States around 1940's Sir Alexender Palerson, the member secretary of the prison Commission of U.K. from 1922 to 1927 made significant contribution to the development of open prisons in England. The philosophy underlying those 'minimum security' institutions was based on the following basic assumptions

Durgapur Open Air Camp in Rajasthan was indeed a unique venture of the Government of Rajasthan in the field of correctional services and rehabilitation programme for offenders. This was an agricultural colony about nine kilometers away from Jaipur and is spread over an area of 116 acres of land. This open prison camp was started in 1955. To begin with, only a limited number of long-termers (usually 6 to 8) were sent from Jaipur Jail to work in this open farm without any escort or supervision. The inmates stayed in the farm along with their families in the residential quarters provided for this purpose. They received wages for daily work. The camp worked so successfully that there was only one escape in the first ten years of its working.

Techniques of Prison Reforms

1. Probation, 2. Parole, 3. Furlough, 4.Suspension Commutation and Remission, 5. Pardon, 6. Open Prisons Self Governance by Inmates, 7. Work Release, 8. Vipassana, 9. After Care Programmes

Prison System and Reformative Techniques in State of Rajasthan

Human Right at Prison in Rajasthan, Weaving Section, Carpentry Section, Sports and Recreational Facilities, Yoga and Meditation

Researcher noticed remarkable activities in prison for example cleansing and disciplining mind, Yoga and meditation classes are run with the help of various voluntary organizations. Staff members are also encouraged to attend meditation courses. Organizations like Brahma Kumari Ishwariya Vishvavidyalaya, Divya Jyoti Jagriti Sansthan, Sahaj Yoga Kendra, Art of Living, etc have been imparting moral education, counseling and techniques of meditation to the prisoners. This has helped many prisoners in changing the whole approach to life.

Prison officers cater to the welfare of the prisoners. Women prisoners can keep their children up to the age of 4 years with them in prisons. Crèches have been established in prisons for benefit of children of women inmates. Yoga and Meditation classes are conducted regularly by various non-governmental organizations. Films of moral and educative value are also shown. Radio and TV Sets have been provided in blocks for the entertainment of prisoners. Music and games are also provided for the recreation of the Prisoners.

Parole, Premature release of prisoners, Periodical Review of cases of under Trial Prisoners, System of meeting, Facilities, Visitors to Prison, Ventilation of grievances, Prisoners' Welfare Fund, Prison Band, Treatment of Women Prisoners, Diet

OBJECTIVES OF RESEARCH

It is an analytical study of Jail Reform And Criminal Justice with reference to prisons in Rajasthan State situated at different places with the following main:

i. To verify and test important fact
ii. To develop new scientific tools, concepts and theories to solve and understand scientific and nonscientific problems.
iii. To find solutions to scientific, nonscientific and social problems
iv. To overcome or solve the problems occurring in our everyday life.
v. To study the effects of the reformation methods on prisoners.
vi. To study the problems faced by Jail Administration in implementing the various methods of reformation & rehabilitation of prisoners.
vii. To expound the concept of justice
viii. To find out the salient features of the theory of jail reform and criminal justice in India
ix. To understand the problems of prisoners and jail administration in India
x. To provide infra-structural facilities and scientific classification of prisoners
xi. If new law is made what will be its ingredients
xii. To analyze the regulatory problems faced by the judiciary in India
xiii. To suggest appropriate strategies for solve pendency in India

LITERATURE REVIEW

I have read many literature and however the decision of supreme court and various High courts and major reports, law commissions, conferences, articles and Journal on jail reform is the main source material of the study. The good reference books on jail reform and criminal justice in India.

The researcher has studied the work of Prof. N.V. Paranjape on criminology and penology with victimology (central law publication, Allahabad) fifteenth edition -2011and reprinted in year 2012. He has well narrated the jail reforms and criminal justice.

Basu,D.D, *Constitution of India (* Prentice of India Pvt.Ltd.,New Delhi, 1981)
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Richard Hawkins & Geoffery – American Prison System, 1989

R.S. Agarwal- Wrote a book the prevention of crime (Radient Publishers)1977

Ratanlal and Dhirajlal, *The Code of Criminal Procedure,* (Wadhwa & Company, Nagpur, 2006)
Sarkar S.K., *Law Relating to Lok Adalats and Legal Aid* (Orient Publishing Company Allahabad, 2nd Ed.2008)
Sir Lionel Fox - The English prison and Borstal system, 1972

He beautifully describe the history of jail, modern jail and open air camp by the medium of this book.

RESEARCH GAP

The current scenario of jail reform and criminal justice systems in India is not satisfactory despite of various aforesaid efforts has been made by the legislature Executive and the Judiciary even after the prison Act-1894

The research work has been done in this area relating to jail reform is not sufficient and a very large vacuum between the problem of overcrowding or health in prisons and self-Government in Prisons

There for is an urgent need to do for research work focusing on jail reform and criminal justice systems. The researcher suggests that meditation and yoga should be there in prison.

That is why the researcher has decided to carry, a research work under title.

RESEARCH HYPOTHESIS

The underlying hypothesis of the purposed research study is based on the problem of Jail reform and criminal Justice system in India.

The types of alternative mechanism and social responsibility of criminal system and Jail in India.

Criminal justice for litigants in India judicial response, judicial objectives, balanced and accurate and Jail reform to litigants the following hypothesis are formulated for the purposed of testing in this research study.

1. India criminal justice system played creative role for solve the jail reform problem in India
2. Is to draw up an impression that right to criminal justice system review and criminal and jail reform acts as soon to the depressed and down trodden sections of the society with improvement and entrenchment in the area of fundamental rights by the why of invoing the concepts of PIL (Public Interest Litigation), SIL(Social Interest Litigation) and exponding the horizons of articale 21 life and personal liberty.
3. Role of NHO and reform workshop jail staff and statis factory working and playing a effective role in criminal justice.
4. There are some problem associated to Jails which attracted researchers kind attention to pursue research on above mentioned subject.

RESEARCH METHODOLOGY

The Research and Methodology involves two aspects for arriving at the conclusion

(i) Doctrinal

(ii) Non – Doctrinal

In doctrinal approach the existing literature in the form of Books, Articles, Research Papers, Seminar publication help me to the topic. Further the **"Jail Reform And Criminal Justice System In India"** again required a detailed doctrinal approach and the same has been followed. The other aspects of Non – Doctrinal includes questionnaire which was there to know about the feedback status of the **Prison System** on my research topic. Interview from various sections of the society was conclusion. The questionnaire as placed by me before the interviewers is annexed and the outcome has been stated by me in the conclusion part.

RESEARCH DESIGN

To make this study scientific and analytical researcher has laid out it in Eight chapters.

1. Introduction
2. History of Jail
3. Concept of Jail in India
   (A) Nature, Definition, Meaning and Object
   (B) Relevant Provisions and enactment.
4. Concept of Modern Jail
   (A) Open Jail (B) Remind Home
5. Judicial Responses and constitution of India
6. Comparative Studies of Jail System with Indian Law between International Laws.
7. Socio, Religion, Caste, Sex and Education Studies of Prisoners in Central Jail in Rajasthan
8. Conclusion and Suggestions.

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